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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/428,508	10/27/1999	GARRY CALLINAN	1423-9	4751
7590	02/24/2004		EXAMINER	
LAFF WHITESEL CONTE & SARET LTD 401 NORTH MICHIGAN AVENUE CHICAGO, IL 60611			LAGMAN, FREDERICK LYNDON	
		ART UNIT	PAPER NUMBER	
		3673		

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/428,508	CALLINAN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Frederick L. Lagman	3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 11-17,19-42,44-48 and 51-72 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 11-17,19-42,44-48,51-55,63 and 72 is/are allowed.
- 6) Claim(s) 56-62 and 64-71 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 56-62, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over French reference #1,398,975 in view of German reference #3,513,539. French '975 discloses the claimed invention except for the cut tyres. German '539 teaches that it is known to provide a retaining wall with cut tyres as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide cut tyres, as taught by German '539 in order to facilitate building of a retaining wall.

3. Claims 65-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over French reference #1,398,975 in view of German reference #3,829,615. French '975 discloses the claimed invention except for the tyres being cut in a plane between opposing side walls. German '615 teaches that it is known to provide a retaining wall with the tyres being cut in a plane between opposing side walls as shown in figure 1 and stated in the abstract. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide tyres being cut in a plane between opposing side walls, as taught by German '615 in order to facilitate building of a retaining wall.

***Response to Arguments***

4. Applicant's arguments filed 11/17/03 have been fully considered but they are not persuasive.

5. As to claim 56-62 and 64, French '975 discloses a wall structure comprising used tires for prevention erosion and German '539 discloses the use of cut tires for a wall structure. It would have been obvious to use cut tires of German '539, since such cut tires are capable of being used to construct a wall structure. Furthermore, the prior art of record discloses the use of tires (whole or cut) in building retaining wall, abutment wall, erosion prevention structures. See for example, French '700, Pulsifier '793, Foehrkolb '088.

5. As to claims 65-71, French '975 discloses a tire structure used for prevention erosion and German '615 discloses a tire structure for river bank consolidation and/or abutment wall. It would have been obvious to use the tires of German '615 since these tires are used for a wall structure such as French '975.

***Allowable Subject Matter***

6. Claims 11-17, 19-42, 44-48, 51-55, 63, and 72 are allowed.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick L. Lagman whose telephone number is 703-305-7456. The examiner can normally be reached on Monday-Friday 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Schackelford can be reached on 703-308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.



Frederick L. Lagman  
Examiner  
Art Unit 3673

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